



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Jeffrey L. Clet

SUBJECT: SEE BELOW

DATE: May 16, 2005

Approved /s/

Date 05/24/05

SUBJECT: FIRE RESPONSE TO PROPOSED STATE ROADS FEE PROGRAM

RECOMMENDATION

Adoption of a fee for services provided on State roads would be inconsistent with current auto and mutual aid agreements with both the California Department of Forestry and Fire Protection (CDF) and other local agencies. A fee would also be inconsistent with the current agreements with American Medical Response (AMR) and Central Fire Protection District under which the City already receives revenue for services provided on state highways. Further, under current State law, the State is not responsible for City costs associated with responses to incidents that are not caused by any negligence or wrongful conduct on the part of the State. Finally, the Fire Department recommends against the initiation of legislation at the State level to allow a charge for services provided on State roads, as such legislation would likely have strong opposition and could result in State efforts to obtain cost reimbursement from the City for fire services provided to San Jose by CDF. The Fire Department does not recommend the establishment of a fee program for services provided on State roads.

BACKGROUND

The Mayor's Budget Message, dated March 16, 2005, directed the City Manager and City Attorney to develop a fee program to charge the State of California, to the extent legally feasible, for our local public safety personnel responding to calls for service on state roads. The State provides highway police services through the California Highway Patrol. However, since there are no state fire services for highways served by local municipalities, the State relies entirely upon local resources without reimbursement to the City. The Fire Department was therefore requested to develop a fee program to cover the cost of these services.

ANALYSIS

The Department currently has a methodology in place to bill for resources utilized in responding to incidents caused by individuals convicted of a DUI. The Police Department manages this program, which generates revenue back into the General Fund. This program generates revenue from DUI convictions on State highways, as well as local roads. The same methodology is used to calculate costs when CDF agrees to provide cost reimbursement to the City for responses that are beyond the scope of our normal mutual aid. A methodology for accounting for the costs of providing emergency medical response is also a part of the City's contract with AMR. Under that agreement the City is reimbursed for responses on State highways as well as elsewhere within the City. Thus, the Department already has methodologies that could be used as a resource in developing a fee amount for services provided on State roads.

There is currently very limited authority under State law for charging for the cost of providing fire suppression services. The City is allowed to collect fire suppression and related emergency medical response costs from a person who negligently sets a fire, or allows a fire to escape. The City's authority to bill for emergency medical responses is further constrained by our first responder agreement with AMR, under which the City receives approximately \$ 1.5 million dollars annually for providing citywide first responder (paramedic) services. State law does not impose any liability for either fire or emergency medical response costs simply because of ownership of property on which an incident occurs. The likelihood of success in obtaining state legislation to authorize a fee under such circumstances would appear to be doubtful at best. Moreover, even raising the issue of costs with the State could lead to additional costs to the City. The City now receives substantial assistance from CDF at no cost. The introduction of the concept of a fee for services provided on State roads would be likely to negatively impact the City's relationship with CDF.

In addition to providing fire protection services to all City of San Jose incorporated areas, also known as the Local Responsibility Area (LRA), under contract with Central Fire Protection District, the City has an additional area that it protects under the agreement that would also be classified as LRA. The State provides fire protection services to all State lands, also known as State Responsibility Area (SRA) and the boundary between the LRA and the SRA areas, known as the Mutual Threat Zone (MTZ). Under agreements and operating plans in place between the City and CDF the City has received state resources at no cost to the City to fight fires in LRA areas including: fixed wing aircraft for retardant drops; helicopters; bulldozers; engines; hand crews and overhead staffing to support incident management. In a recent example of an LRA incident that occurred in July of 2004, the "Silver Fire" an incident that lasted three days, consumed 435 acres, and CDF provided resources at no cost to the City. CDF has estimated that had it chosen to bill the City, the bill would have been almost \$400,000.

Although CDF does not currently bill local agencies, cities, including San Jose routinely bill the State for local government resources that they provide to incidents under the State OES Mutual Aid Reimbursement System. This was the case at the last several fires that San Jose sent resources to including the "Del Portal", "Kincaid", and "Croy" Fires.

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CONCLUSION

The City is already receiving some revenue from services provided on State road, under contracts with AMR and Central Fire Protection District. Additional revenue is also received when an incident results in a DUI conviction. Efforts to implement a fee to recover the costs of providing service on State roads could result in changes to LRA and MTZ operating agreements between CDF and the San José Fire Department and would likely result in increased costs to the City to utilize State resources that we rely on to provide the needed required fire suppression services to our community.

COORDINATION

The preparation of this memorandum has been coordinated with the City Attorney's Office.

/s/

Jeffrey L. Clet
Fire Chief